



**Food and Agriculture
Organization of the
United Nations**



The International Treaty
**ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

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Item 8 of the Provisional Agenda

SIXTH SESSION OF THE GOVERNING BODY

Rome, Italy, 5 – 9 October 2015

Reviews and Assessments under the Multilateral System and of the Implementation and Operation of the Standard Material Transfer Agreement*

Executive Summary

This document provides a brief overview of the reviews and assessments provided for in the Treaty in relation to the Multilateral System and reports on relevant developments during the intersessional period, especially in the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System for Access and Benefit-sharing.

Guidance Sought

The Governing Body is invited to include the reviews and assessments mentioned in this document in its deliberations under Agenda Item 8, *Enhancement of the Functioning of the Multilateral System of Access and Benefit-sharing* and, should it not reach consensus, postpone them again until its next session.

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*The present version replaces an earlier draft which was erroneously uploaded during document processing.

I. INTRODUCTION

1. The Treaty provides for the following reviews and assessments to be carried out by the Governing Body, in relation to the implementation of the Multilateral System and the operation of the Standard Material Transfer Agreement:

- The Governing Body shall assess the progress in including plant genetic resources for food and agriculture in the Multilateral System by natural and legal persons and *decide whether facilitated access shall continue to be provided to those natural and legal persons* that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate (Article 11.4);
- The Governing Body may, from time to time, *review the levels of payment of the Standard Material Transfer Agreement*, with a view to achieving fair and equitable sharing of benefits (Article 13.2d(ii)); and
- The Governing Body may *assess, whether the mandatory payment requirement in the Standard Material Transfer Agreement shall apply* also in cases where commercialized products are *available without restriction to others* for further research and breeding (Article 13.2d(ii)).

2. The Governing Body has repeatedly postponed these reviews and assessments.

3. The *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (Working Group), during this biennium, has extensively discussed them together with the underlying technical questions.¹

4. This document gives a brief overview of the reviews and assessments and briefly summarizes the relevant discussions during the intersessional period.

II. ASSESSMENT OF PROGRESS IN INCLUSION OF MATERIAL BY NATURAL AND LEGAL PERSONS AND DECISION ON CONTINUED FACILITATED ACCESS FOR NATIONAL AND LEGAL PERSONS, ARTICLE 11.4

5. Article 11.4 of the Treaty provides that

Within two years of the entry into force of the Treaty, the Governing Body shall assess the progress in including the plant genetic resources for food and agriculture referred to in paragraph 11.3 in the Multilateral System. Following this assessment, the Governing Body shall decide whether access shall continue to be facilitated to those natural and legal persons referred to in paragraph 11.3 that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate.

6. According to Article 11.3 of the Treaty

Contracting Parties [...] agree to take appropriate measures to encourage natural and legal persons within their jurisdiction who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System.

¹ IT/GB6/15/6 (Report of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System).

7. Since the entering into force of the Treaty, the Governing Body has repeatedly urged natural and legal persons to include their plant genetic resources for food and agriculture listed in Annex I to the Treaty in the Multilateral System. It also urged Contracting Parties to take appropriate measures, in accordance with Article 11.3 of the Treaty.²

8. The *Ad Hoc* Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System (Committee) issued an opinion on legal and administrative measures to encourage natural and legal persons to voluntarily place material in the Multilateral System. In this opinion, the Committee stated that “*the decision on what measures to establish under Article 11.3 of the International Treaty is left to the discretion of Contracting Parties. Those measures may include, but are not be limited to, financial or fiscal incentives to holders of material (e.g. eligibility for public funding schemes). They might also consist of policy and legal measures, administrative actions setting up domestic procedures for inclusions, or awareness raising efforts (especially at the level of farmers).*”³

9. The Governing Body has repeatedly postponed the assessment and decision under Article 11.4 of the Treaty.

10. The information on material currently known to be available from natural and legal persons is contained in document IT/GB6/15/8, *Report on the Implementation of the Multilateral System*.

III. REVIEW OF PAYMENT LEVELS, ARTICLE 13.2d(ii)

11. Article 13.2d(ii) of the Treaty, amongst others, provides that

The Governing Body may decide to establish different levels of payment for various categories of recipients who commercialize such products; it may also decide on the need to exempt from such payments small farmers in developing countries and in countries with economies in transition. The Governing Body may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits.

12. The Governing Body originally decided to review the payment levels periodically, starting from its Third Session, but subsequently postponed such review repeatedly.

13. The Working Group has been discussing various options for reviewing the payment levels currently contained in the Standard Material Transfer Agreement, as well as for establishing possible additional differentiations, such as categories of recipients or crop types. These discussions are briefly summarized below and reported more comprehensively in document IT/GB6/15/6, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*.

IV. ASSESSMENT OF WHETHER THE MANDATORY PAYMENT REQUIREMENT SHALL BE EXTENDED, ARTICLE 13.2d(ii)

14. Article 13.2d(ii) of the Treaty also provides that the Governing Body

may also assess, within a period of five years from the entry into force of this Treaty, whether the mandatory payment requirement in the MTA shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding.

² Resolution 2/2006, para. 7; Resolution 4/2009, para. 10; Resolution 4/2011, para. 5; Resolution 1/2013, paras. 14, 16.

³ IT/AC-SMTA-MLS 1/10/Report, Appendix 4.

15. The Governing Body has not undertaken such an assessment to date, but instead postponed it repeatedly, starting within the five years period after entry into force of the Treaty.

16. One of the “innovative approaches” proposed to the *Ad Hoc* Advisory Committee on the Funding Strategy in the last biennium related to this assessment, which involved revisiting Articles 6.7 and 6.8 of the Standard Material Transfer Agreement, specifically in order to make voluntary payments mandatory, with different levels of payment for different restrictions for multiplication, or research and breeding.

17. In this biennium, the Working Group continued to discuss the possibility of making voluntary payments mandatory and these discussions are also briefly summarized below and reported more comprehensively in document IT/GB6/15/6, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*.

V. DISCUSSIONS IN THE *AD HOC* OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM

18. The *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing (Working Group) has met three times in this biennium, building on the work of its predecessor committee, the *Ad Hoc* Advisory Committee on the Funding Strategy, and with the mandate to develop measures to (a) increase user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner; and (b) enhance the functioning of the Multilateral System by additional measures.⁴

19. Based on a number of background documents, including comprehensive technical studies requested by the Governing Body, the Working Group, *inter alia*, held extensive preliminary discussions on all the above reviews and assessments, as well as the underlying technical questions.

20. The Working Group reviewed, amongst others, the structural problems leading to the current short-fall of user-based income to the Benefit-sharing Fund, which included the problem of voluntary payments and the imbalance of payment rates between the different payment options in the Standard Material Transfer Agreement.⁵ It agreed that an enhanced Multilateral System should increase incentives for users, and in particular the seed sector, to use the Multilateral System.⁶

21. The Working Group further agreed that the structural problems of the Multilateral System cannot be overcome by revisions of the Standard Material Transfer Agreement alone, but recognized that some immediate changes could be done to make early progress on this. However, the Working Group could not yet agree on whether to retain voluntary benefit-sharing as the payment option for products freely available for further research and breeding. Moreover, there is still no consensus on how to balance the payment rates and whether to establish additional differentiations, for example based on types of users or types of crops.⁷

22. A comprehensive report on the work of the Working Group during this biennium is contained in document IT/GB6/15/6, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*.

⁴ Resolution 2/2013, para. 23

⁵ IT/OWG-EFMLS-1/14/Report, para. 7

⁶ IT/OWG-EFMLS-2/14/Report, para. 4

⁷ IT/OWG-EFMLS-3/15/Report

VI. GUIDANCE SOUGHT

23. The Governing Body is invited to take the reviews and assessments mentioned in this document into account in its deliberations under Agenda Item 8, *Enhancement of the Functioning of the Multilateral System of Access and Benefit-sharing*. Should the Governing Body not take decisions on the reviews and assessments foreseen in Articles 11.4 and 13.2d(ii) of the Treaty in the context of the enhancement process, the Governing Body is invited to review and adopt the draft Resolution (*Appendix*), by which it would again postpone the reviews and assessments foreseen in Articles 11.4 and 13.2d(ii) of the Treaty, to its next session.

*Appendix****DRAFT RESOLUTION **/2015******REVIEWS AND ASSESSMENTS UNDER THE MULTILATERAL SYSTEM AND OF THE IMPLEMENTATION AND OPERATION OF THE STANDARD MATERIAL TRANSFER AGREEMENT*****The Governing Body,**

1. ***Decides*** to again postpone the reviews and assessments foreseen under Articles 11.4 and 13.2d(ii) of the Treaty, to its Seventh Session.